CIVIL WRIT JURISDICTION CASE No.4129 OF 1990

In the matter of an application under Articles 226 and 227 of the Constitution of India.

1.(a) Indira Maya Devi, wife of late Sukhdeo Mishra
(b) Binay Kr. Mishra
(c) Praveen Kr. Mishra
Both sons of late Sukhdeo Mishra.
2.(a) Manju Mishra, wife of late Nilamaber Mishra.
(b) Bala Krishna Mishra
(c) Gopi Krishna Mishra,
Both sons of late Nilamber Mishra
3. Shri Navin Mishra @ Navin Kumar Mishra son of late Abhiram Mishra.
All residents of Village – Bhuskaul, P S - Sadar Darbhanga, District – Darbhanga.

---------- Petitioners

Versus

1. The State of Bihar
2. The Divisional Commissioner, Darbhanga.
3. The Settlement Officer, Darbhanga, Dist. Darbhanga.
4. Shri H N Kanth, Charge Officer, Darbhanga.
5. Shri Nand Kumar Thakur, son of late Chhitan Thakur.
6. Bal Kumari Devi alias Atrukhbati wife of late Chhitan Thakur.
Both residents of Village – Bhuskaul, P.S. Darbhanga Sadar, District – Darbhanga.

---------- Respondents

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For the petitioners: Mr. Arun Kumar Jha.
For the private respondents: Mr. Ajay Kumar Thakur.
For the State: Mr. M D Singh, JC to GP 16.

P R E S E N T

THE HON`BLE MR. JUSTICE AJAY KUMAR TRIPATHI

A K Tripathi,J Challenge is to the order dated 16.10.1987 contained in annexure-6 which is an order passed in Survey Revision No. 42 of 1985 by the Settlement Officer, Darbhanga under the purported exercise of power under section 103-A(3) of the Bihar Tenancy Act.

2. Submission of the learned counsel for the petitioners is that in view of the law laid down by a Full Bench in the case of **Ram Kishun Mandal and another v. State of Bihar and others,** 1987 **PLJR 291**, the revenue authority has erred in exercising the power of review of its own decision. In this regard attention is drawn to para-16 of the said decision which is reproduced below:

> **"16. In the light of the aforesaid authoritative enunciation, the answer to question no.3 is rendered in the negative and it is held that the Revenue Officer acting under section 103-A (3) of the Act has no inherent power to review his own decision till the final publication of the record of rights."**

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3. Learned counsel appearing for the private respondents, however, submits that the reasoning given in para-16 may not be in order because the Full Bench has relied upon an earlier decision rendered in the case of Ramdayal Missir and others v. State of Bihar and others, AIR 1958 Patna 4, but then the law has undergone a change and the amendment to section 103A (3) has been brought about in the year 1967. In this view of the matter the ratio laid down in the case of Ram Kishun Mandal (supra) based on the decision of Ramdayal Missir (supra) may not be the correct law.

4. There could be some weight in the submission made by the learned counsel for the respondents but in view of the binding precedent upon this Court, in view of para 16 of the case of Ram Kishun Mandal (supra) this Court has no option but to allow

the writ application and quash annexure-6. The consequential order thereafter passed by the Divisional Commissioner contained in annexure-7 dated 20.6.1990 is also set aside.

5. The writ application is allowed.

(Ajay Kumar Tripathi, J)

Patna High Court:
The 15th December, 2008.
(NAFR) R K Pathak.

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